

ENTRY REVISION PROJECT

Appended are 4 recent documents relating to developments on ERP since the Customs Trade Symposium of November 2000.

1. May 10, 2001 letter from Assistant Commissioner Seidel to Richard Belanger on behalf of a number of trade groups.
2. April 10, 2001 letter to Mr. Seidel from Mr. Belanger.
3. March 16, 2001 letter from Assistant Commissioner Seidel to four trade groups.
4. February 12, 2001 letter to Mr. Seidel from four trade groups.



US. Customs Service

1300 Pennsylvania Avenue, N.W. Washington, D.C. 20229

Mr. Richard Belanger, Esq.
Powell, Goldstein, Frazer & Murphy LLP
Attorneys at Law
1001 Pennsylvania Avenue, NW.
Washington, D.C. 20004

MAY 10 2001

On behalf of the organizations
listed below

Dear Mr. Belanger:

Your letter of April 10, 2001, outlined the general principles agreed upon by various Trade groups as a result of the discussions conducted regarding Customs Entry Revision Project (ERP). Our response to your submission and some of the points raised in our April 11, 2001, meeting are as follows:

- The Trade is to be commended for their efforts in this initiative. Many individuals, companies, and Associations have invested time and effort in analyzing the various entry processing options presented. We are particularly pleased that the various groups met together and were able to work out these consensus agreements regarding the core principles for the entry redesign.
- We will make comments on some specific recommendations later in this letter but in general, we concur with your conclusion that we are in agreement on the general principles and the details will be worked out in the ACE development sessions. As we view it, that consensus you have reached is primarily to keep the current statutory entry structure, but program reconciliation so it is far more efficient and design Importer Activity Summary Statement (IASS), so it can be an efficient form of a monthly entry and payment means. Since we appear to be in general agreement on the concepts, and the ACE Prime contract has recently been awarded, we will terminate the ERP initiative and focus our developmental efforts on the ACE process.
- Your approach basically embraces the current entry by entry system. We remain convinced that as entry volumes grow (currently 23.5 million per year), the day will come when many large companies will prefer to work on a "fiscal year" rather than entry by entry approach. While the consensus reached by the

TRADITION

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Trade is not as visionary as we had proposed in the "Extended Option" track of the various ERP proposals, in the spirit of partnership, we recognize the Trade must ultimately agree as to how much change should be undertaken at any one time.

Some specific comments regarding your consensus proposal are:

1. Re Release: We agree with the general concepts expressed but, as in your February **12, 2001**, response, you fail to mention the need for an efficient "release control" system. As was indicated in our response of March **16, 2001**, such a feature is essential and will be required in the ACE design. Essential data to accomplish this function will be required, in some fashion. This issue relates specifically as to whether 6 or 10 digit Tariff numbers are required at release and whether quantity and total value are needed. We do not anticipate that this would require more data elements than are currently required but, as we work to define what "minimal data" at release means, be assured that we will insist that the data is sufficient to provide such a system.
2. The organizational representatives who met with Customs on April 1 **1, 2001**, agreed that, conceptually, it was reasonable that at time of release we would require the filer to indicate which of the entry summary processing options they were choosing.
3. Re IASS: **IASS** is a programming, not a regulatory, issue. We do not intend that any further prototype testing will be done in ACS. All significant future developmental programming will be done as part of ACE. We envision that in that project desired **IASS** and Reconciliation changes will be an inherent part of the entry programming, not adjuncts. The timing of those developments will rest with the Prime contractor, not Customs. However, we agree with you that these features should be implemented as soon as possible.
4. Re Post Release and Revisions: The status of **IASS** as the legal entity and what happens when some issues on the entry need to be extended remains an issue to be worked out in ACE. It should be noted, however, that Customs reserves the right to extend liquidation on all company entries when a general audit of the company is being conducted.
5. We recognize your desire to go to a 21 month Reconciliation period. We had previously agreed to the **18-month** modification. We are concerned that more justification needs to be presented as to why this is necessary and that, based on our experience in

the reconciliation prototype, many companies are simply taking the extra time and doing little, if any, additional entry review.

6. Re The Money: Your proposal is an innovative approach that certainly merits further consideration. There are a great many detailed issues regarding how to best set up such a system. They will be worked out in the ACE development sessions. To date, few Trade representatives have volunteered for that ACE development group, and we urge you to encourage your members who helped develop this proposal to volunteer for that workgroup.
7. Re Protests/Appeals: As indicated in our ERP meetings, we will have a future meeting with the Trade groups regarding a range of "tail end" entry processing issues relating to liquidations, Protests, "clerical errors" and "treatment". We want to determine some of the detailed ACE procedures for Entry/Entry summary prior to holding that meeting. One of the ideas that had been discussed in the ERP process was substituting a 180day Protest period for elimination of the one year "clerical error, inadvertence, mistake of fact provision". We are reviewing the desirability within Customs and ask whether you have any consensus on the matter.
8. Re Drawback: Your proposed approach regarding commercial interchangeability has some administrative benefits that merit consideration. However, in the past the expansion of this concept has raised some political concerns. We have met with the group representatives and been assured that their review of Drawback will be comprehensive and this proposal is only the beginning. We will continue to work with the Trade representatives on this subject, but we stress our firm belief that a comprehensive review of the core Drawback requirements is essential.

We thank you and all your group representatives for their ERP efforts and look forward to your active participation in the ACE developmental process.

Sincerely,

A handwritten signature in cursive script that reads "Stuart P. Seidel".

Stuart P. Seidel
Assistant Commissioner,
Office of Regulations and Rulings

Organizations for whom
Mr. Belanger, **Esq.**, submitted
Comments on "behalf of":

American Association of Exporters and Importers
American Apparel & Footwear Association
Alliance of Automobile Manufacturers
American Bar Association-Customs Committee
Air Courier Conference of America
American Electronics Association
Association of International Automobile Manufacturers
American Surety Association
Business Alliance for Customs Modernization
Global Electronic Trade Alliance
Joint Industry Group
National Association of Foreign Trade Zones
National Customs Brokers and Forwarders
 Association of America
National Council for international Trade Development
National Retail Federation
U.S. Apparel Importers Council
USA-ITA

April 10, 2001

Assistant Commissioner Stuart Seidel
United States Customs Service
13 00 Pennsylvania Avenue, N. W.
Washington, D.C. 20229

Re: ERPIII

Dear Mr. Seidel:

This letter and enclosure are filed on behalf of the organizations listed below (the "trade coalition"). We appreciate the fact that your office provided us with comments relating to the proposals contained in the letter of February 12, 2001 filed on behalf of several organizations within the trade coalition. That letter served as the basis of discussion during our meetings on March 20 and 21, 2001, attended by all the groups present at the meetings conducted by the Customs Service this past January and February.

We enclose an outline of the general principles agreed upon at our meeting. The outline represents the consensus of the various industry sectors on ERP III. As noted in the February 12 letter; while ERP III attempts to address certain aspects of customs modernization, other proposals will need to address the broader range of customs modernization issues.

We are pleased to note that we believe that there are now a number of areas in which the private sector and Customs are in agreement or very close to agreement. To assist you in understanding these principles, we offer the following comments.

Careo Release and Entry Tracks. We appear to be in agreement with Customs as to the goal of requiring "minimal data at release" for all importers on formal entries. We recognize that we will have to await publication of the Treasury Department study to help determine the data that will actually be required. However, we believe that the three questions posed in the outline should serve as the basis for determining the minimal data needed by the Government at the time of release and whether a portion of that data could be deferred to a later date.

Under current law and regulations, Customs has adopted special programs which already permit certain importers to provide less data than other importers at the time of release. We encourage Customs to expand these programs to as many importers as possible, but understand that importers who wish to participate in these programs will have to meet certain objective qualification criteria. However, in establishing those criteria, Customs policy should be one of inclusion rather than exclusion. In other words, importers should be included unless there is demonstrable reason to exclude them.

We believe that conceptually the trade coalition and Customs are in basic agreement over approaches to cargo release and it is now appropriate to turn this issue over to the TSN to begin working out the details.

Importer Activity Summary Statement (IASS). We favor issuance of regulations implementing the IASS provisions of Section 1484(a)(2)(A), including the filing of the IASS 20 days after the end of the reference month. However, in order to provide for testing at the earliest possible date, as an interim

measure, we agree to the proposal offered by the Census Bureau, allowing filing of the IASS 10 business days after the end of the reference month.

Post Release and Revisions. We agree with your observation that members of the trade coalition no longer see the need for a statutory corrective period. Rather, we believe that the current PEA and reconciliation programs, with suitable modifications, can serve the same purposes. You will note from our outline that we now refer to “revisions” rather than “corrections.” We believe that this term encompasses both new information that may not have been available at the time revenue and statistical data were submitted to Customs, as well as changes to information that was already submitted.

We also recommend expanding the data elements that can be revised. In our view, all data elements should be subject to revision through the filing of a post-entry amendment or reconciliation, other than those elements that directly affect the admissibility of merchandise.

With specific regard to reconciliation, experience with the prototype has revealed that the fifteen-month period provided for filing the entry may not be long enough. Some importers that use the fiscal year as the period to be reconciled find that it takes nine months from the end of fiscal year to accumulate the necessary data. We ask Customs to join us in support of an amendment to the present statute to provide, as an alternative, for a period of not more than 21 months from the beginning of the fiscal year for the filing of the reconciliation entry where the reconciliation is based on the importer’s fiscal year.

We are also encouraged by the Bureau of the Census offer to consider adoption of an IASS for the land border. We urge that a prototype of the IASS be implemented as soon as possible and that it be expanded from land border shipments to all importations. We also believe that the prototype should include the greatest flexibility for the importer to determine which importations can be included in the IASS (e.g., whether by a division of a company, combining ports of entry, etc.).

Finally, Customs should continue to promote the use of paperless transactions.

The Money. We discussed at some length a payment system for use by importers in conjunction with an IASS. Two major concepts were reaffirmed: several payment approaches, transaction-based and **account-**based, are required to address the needs of both large and small importers; and we are opposed to any system that requires the payment of interest. For that reason, ACE should support several payment approaches – the current **10-day** payment period, payment against the daily statement, and a payment system utilizing periodic estimated payments of duties, taxes and fees. Our outline provides an example of how an estimated payment system might operate. We also note that the **30-day** periodic payment systems in use in Canada and Great Britain do not have interest components. We believe that the United States should adopt a similar system. Understanding that we must pursue this issue with the Department of the Treasury and the Congress, we will be pleased to do so at the appropriate time.

Protests. We recognize that, as you point out in your letter, the issue of whether liquidations by operation of law (and, possibly, “no change” liquidations) may be protested has been raised in several decisions by the Court of International Trade. You point out that your position on this issue reflects your understanding of the current law, particularly in the “deemed liquidated” situation. Irrespective of the correctness of this interpretation, the coalition submits there are many situations in which entry information – classification, value, quantity, duty, fees, etc. -is later discovered to be incorrect, and the error is adverse to the importer. There is no good reason why such an entry, whether “deemed liquidated”

or actually liquidated by Customs, should not be subject to protest before liquidation becomes final so that the importer may recover an overpayment of duties. We would appreciate your support for an appropriate amendment to the statute clarifying this right.

Drawback. The coalition also recognizes that, insofar as substitution drawback is concerned, the current interpretation of the drawback law impedes the payment of drawback. Given the adoption of the IASS, in order to modernize the current law and to streamline the process, we urge that consideration be given to defining the statutory terms "same kind and quality" and "commercially interchangeable", in terms of a common **HTSUS** classification rather than by the present subjective determination.

In sum, we believe that we are much closer to reaching agreement on the points discussed so far. For the scheduled April 11th and 12th sessions, we suggest that a meeting with a few designated representatives of the trade coalition for the purpose of further discussion would be preferable to a meeting with the entire group.

Sincerely,



for:

American Association of Exporters and Importers
American Apparel & Footwear Association
Alliance of Automobile Manufacturers
American Bar Association-Customs Committee
Air Courier Conference of America
American Electronics Association
Association of International Automobile Manufacturers
American Surety Association
Business Alliance for Customs Modernization
Global Electronic Trade Alliance
Joint Industry Group
National Association of Foreign Trade Zones
National Customs Brokers and Forwarders
Association of America
National Council for International Trade Development
National Retail Federation
U.S. Apparel Importers Council
USA-ITA

Enclosures

Trade Coalition General Principles – ERP III

April 10, 2001

RELEASE:

Goal: Any future system should provide for widely available release of cargo on minimal data. Minimal data consists of the information elements needed to answer the following three questions:

- (1) Does Customs have the information needed to determine whether the merchandise is admissible?
- (2) Does Customs have the information needed to know whether the shipment should be examined?
- (3) Who is responsible for completion of entry and payment of duties?

Characteristics of a release program based on minimal data:

- Release on minimal data should be broadly available and data requirements should be uniform and predictable.
- Minimal data may vary by commodity to meet the requirements of other government agencies; where such additional data elements are necessary, they should be published prior to imposition of the reporting requirement.
- Future systems should allow for advance submission of non-variable minimal data elements (updated when required) to reduce the amount of data flowing between filers and Customs with each shipment.
- Future systems should allow for importers that qualify under published objective standards to file minimal data by registering with Customs without prior approval, but Customs would retain the authority to disqualify the filer for specific cause.
- Minimal data release policy should be applicable to all modes of transport.
- An importer that has the right to obtain release on submission of minimal data, should have the option of obtaining release on the submission of complete data.

POST RELEASE:

Goal: Reduce the frequency of transmissions and volume of data transmitted by filers and processed by Customs by providing as soon as possible an option for aggregate filing of statistical and revenue data (i.e., “rolled-up” data by tariff number or other differentiating variable) for multiple releases, while retaining current options for filers who want them.

Characteristics of a multi-option post release filing system:

- There should be three tracks for completing accounting and statistical requirements:
 - (1) Full data at release, or within a specified period after release,
 - (2) Release followed by the filing of an IASS containing statistical and revenue data for *each release* not later than a specific number of days after the close of the month in which a shipment is released¹ (although filers will retain the opportunity to file at any earlier time **after** release), and
 - (3) Release followed by an IASS summarizing statistical and revenue activity for the previous month, filed not later than a specific number of days after the close of the month.¹
- Importers should have flexibility to use an IASS or any of the prescribed methods for completing statistical and accounting requirements.
- IASS should be implemented immediately and made available to all importers who wish to use it .
- The IASS will be the legal entity (i.e. the entry) for filers who use it; provided, that if Customs extends liquidation of an IASS it should extend only those lines (either by entry number for filers that report each release or by HTSUS number for those that summarize monthly import data) on the IASS with respect to which it has insufficient information to finalize the IASS.
- Importers should have flexibility to structure the IASS in the manner that best comports with their business practices (e.g., either by importer number, port, etc.).

REVISIONS:

Goal: Any future system should (1) encourage importers to revise information filed with Customs to insure submission of complete and accurate data., and (2) permit such revisions regardless of when they are offered.

Characteristics of a post-filing revision system:

- Importers should be able to reconcile (revise) all or specific entry elements of a single ES/IASS or multiple ESs/IASSs tiled over a specified period (such as a fiscal year) permitting those elements not reconciled to become final. Similarly, when Customs

¹ Current law provides that the IASS may be filed up to 20 days after the end of the activity month. The Census proposal requiring filing within 10 business days should be tested as soon as possible. Government and industry should reevaluate the issue of the time of filing after experience with such testing.

extends finality, it should only be done with regard to those elements as to which it does not have sufficient information to finalize the IASS.

- Importers should be able to designate either prospectively or retrospectively those elements of an **ES/IASS** they want to reconcile or revise.
- An importer who designates elements of an **ES/IASS** or **ESs/IASSs** for reconciliation will have up to fifteen months from the date of a single **ES/IASS**, or by election up to nine months from the end of the importer's fiscal year, to finalize the **ES(s)/IASS(s)**.

MONEY:

Goal: Future system should provide payment options under which calculation and payment of duties and other monies owed is separate from the release process.

Characteristics of a payment system:

- System should offer several payment approaches to address the needs of both large and small importers, transaction-based and account-based.
- System should provide for payment without incurring interest except as provided under current law for late payments.
- For importers wishing to utilize the system, there should be an account-based payment system available authorizing semi-monthly payments of estimated duties, taxes and fees. An example of such a system follows:²

Estimated payment on the 22nd day of the activity month and the 7th day of the following month, covering releases made during the activity month;

Preliminary statement submitted by importer for the activity month on the 1st day of the month following the activity month;

Customs sends final statement on 12th day of month following activity month, showing adjustments to preliminary statement for refunds and credits;

Payment of additional amounts owed, or refund via EFT or rollover refund, per final statement on the 15th day of the month following the activity month.

² For ease of reference, the example uses semi-monthly payment dates that relate to the timing in the current Census IASS proposal on land border shipments.

Final statement can be national in scope, including activity at multiple ports.

Calculation of Final Statement:

– If estimated payments are correct or within 5 percent of the amount due, no interest is due;

If the additional amount owed is greater than 5 percent of the total amount due for the month (prior to deducting refunds) interest will be assessed on the additional amount owed at the then-applicable **IRS** quarterly rate from the first day of the month following the activity month;

No interest credit will accrue to filers on overpayments of estimated duties paid; interest will continue to accrue in all other circumstances.

- Importers would not be permitted to (1) combine semi-monthly estimated payments into the last payment, or (2) skip both estimated payments and pay on final statement.
- Importers not complying may be removed from the program.
- Payments should be made through ACH account.

APPEALS:

All entries that have become final must be subject to protest within the period provided by law; also subject to protest would be any Customs action or refusal to act.

DRAWBACK:

Goals:

- (1) To track changes to the entry process.
- (2) To allow for drawback claims based on data in an **ES/IASS**.
- (3) To simplify the drawback claims process, particularly for substitution drawback.
- (3) To restore program to comport with the original intent of Congress.

Characteristics of a substitution drawback program:

- Allow “same kind and quality” and “commercially interchangeable” to be defined as “having a common HTSUS classification”.
- Replace quantitative accounting with value accounting except for goods subject to a specific rate of duty.

These characteristics are illustrated in the following example of drawback under Section 13 13(b) (manufacturing substitution drawback):

Import 10,000 H-rated automobile tires value at \$35 each (total of \$350,000) subject to a duty rate of 4%, pay duty of \$14,000. Use tires in the manufactures of automobiles;

- Export 1,000 automobiles with 4,000 U.S.-made V-rated tires valued at \$60 each (total of \$240,000);
- Apply import duty rate of 4%, claim drawback in the amount of \$9,600.

If H-rated tires are not produced in the U.S., application of the current “same kind and quality” standard here would have prevented the manufacturer from using domestic tires on the exported automobiles if it wished to claim drawback on the tires. .

Here is an example of a drawback claim under Section 13 13(j)(2) (same condition substitution drawback):

- Import 1,000 kilograms of Sea Island cotton yarn classified in heading 5205 measuring per single yarn less than 125 decitex, valued at \$1.50 per kg;
- Export 1,800 kilograms of domestic upland cotton yarn classified in heading 5205 and measuring per single yarn less than 125 decitex, value at \$0.75 per kg;
- Apply import duty rate of 12%, claim drawback of \$162.

Applying the current “commercial interchangeability” standard to this case would have prevented use of yarn made from domestic cotton as a basis for the drawback claim, since domestic upland cotton is not commercially interchangeable with Sea Island cotton.



U.S. Customs Service

1300 Pennsylvania Avenue, N.W. Washington, D.C. 20229

Joint Industry Group
American Association of Exporters
& Importers
National Customs Brokers and Forwarders
Association of America
U. S. Business Alliance
For Customs Modernization

MAR 16 2001

Dear Gentlemen,

Your letter of February 12, 2001, provided comments regarding the Customs Entry Revision Project (ERP) III proposal. While it has been our practice not to respond individually to comments received regarding the proposals, we will do so in this instance, in hopes of providing input for the Trade meeting on March 20 and 21st. We strongly commend your efforts to reach a single "Trade" position on your desired proposal and hope that the March meeting will further that cause. Our comments are as follows:

1. Re: Prior meeting notes Your comments regarding the notes to the prior meeting are noted. The notes from that meeting may be irrelevant in light of the discussion at the February session and at the Trade March session. We anticipate "redefining" the agreed upon concepts at the commencement of our next joint meeting. We believe that the January and February meetings have provided all attending groups with a better understanding of the rationale behind the ERP proposal and the operational and legal implications of various alternative approaches.
2. Re: Cargo Release and Entry Tracks We agree that the requirement of "live entry" should be used as seldom as possible. The degree to which Track 4 can be utilized will depend on a variety of policy factors and the political outcome of the "minimal data at release" issue.

TRADITION Our position regarding "minimal data at release" is as follows: First, we agree with you that cargo should be released requiring "minimal data". The issue is "what constitutes minimal data?". It is Customs position
SERVICE that "minimal data" must mean enough information so that Customs can make an admissibility decision,

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establish a release control item to insure that a summary and duties are actually filed and, if not, establish a liquidated damages "failure to file" case. These are basic functions tasked to Customs and failure to accomplish them would bring into question the operational integrity of the Service. We can not and will not compromise that essential system integrity. -The initial stages of those processes must be done via automation since those tasks involve tremendous volumes of entries (23.5 million entries in FY 2000).

Recognizing these critical needs from the government perspective, we were quite disappointed with your comments regarding this section. In the January meeting, we had indicated that the release function was more than just the "admissibility" function and spent considerable time discussing the critical nature of our need for enough information to establish a "release control" system. Yet your comments address only the "admissibility and release decisions....". You indicate "Quantity should be required as a release data element only for goods subject to import restraints and value should be required only when relevant to admissibility." Such a **proposal** is totally unacceptable to us because it would preclude the establishment of any reasonably accurate form of an automated release control system.

Adoption of your proposal would mean that Customs would have little more than an importer's number and a 6 digit tariff number, in many cases. Quantity and value information at release provides Customs with the ability to electronically compare what we were told at release with the follow-up summary information to insure that we are getting an entry summary for what was released. Failure to have such a capability, means an importer could release a million dollar shipment and follow-up with a thousand dollar entry summary. We must have enough data to make that basic comparison for system integrity reasons. We recognize there will be changes in **quantity/value** between release and summary, and we can and do accommodate those in a reasonable manner.

Additionally, the "**value**" element will help us insure that our examination decisions are appropriate. We would not select the cargo to be examined because of

the value involved, but if cargo has been identified for possible exam, it makes no sense to examine it if it is only worth several hundred dollars. We agree with the Trade that we should examine a minimal amount of shipments; but the exams we conduct should be as relevant and effective as possible.

Regarding your proposal that "HTS classification generally should be required for release purposes only to the 6th digit, although in some cases classification to the 8th or 10th may be needed to determine admissibility", we strongly disagree. Any Customs system begins with someone "declaring" what they are entering. Such a declaration at the 6 digit level lacks specificity. We agree that sometimes admissibility can be determined at the 6 digit level, but the release control and "failure to file" functions generally cannot be maintained. Attached are typical pages from the HTSUSA. As you can see, the 6 digit level frequently leaves a wide range of products and rates that may be covered. What would we do in a "failure to file" situation? Just assume that the highest rate applied? We suspect the sureties might have some concerns about such an approach.

In discussing this proposal with some of your members, we sometimes get the response "if the duty would be different then Customs should require 8 digits". We really question whether that "uncertainty" as to what will be required at release time is worth the price you seem to be willing to pay. Since "certainty of release" is clearly desirable for importers, we suspect your filer will have the 10 digit number in the file so they can quickly respond if we say it is needed. It seems to Customs, that the real problem should not be about whether we get the 10 digit data, but rather what will our policy be when you make subsequent changes to the data. As we have indicated in our meetings, and as we do today, absent the most egregious situations, we allow you to make the changes at entry summary with no penalty implications.

As Customs sees the issue, it boils down to this; Prior to the Mod Act, we both needed to know what you were importing. The Mod Act recognized that Customs only needed to routinely know to the Tariff number level. If Customs needed more detail, we'd get back to

you. The Congress-that passed the Mod Act certainly assumed that these basic importing responsibilities rested with the filer and would be accomplished at release. We believe the current Congress still does, but we'll be glad to discuss the matter with you and them.

'Actually, we believe the matter can be resolved amicably in the following manner. Customs agrees that some cargo can be released at the 6 digit level. We do so today in a variety of land border situations. But those are "pre-approval" situations with a limited number of importers/brokers and commodities. However, it is those characteristics that enable us to meet our admissibility and release control responsibilities. If you reword your proposal to say "Customs will normally require the 10 digit HTS number but is encouraged to release based on a 6 digit number, whenever possible", we would be in agreement. There was some discussion of this approach at the February meeting and we suggest it be further considered.

3. Re: The Money We recognize your opposition to paying any interest on duties due. As we have previously indicated, this is really a policy issue to be decided by the Treasury Department and Congress. Once the appropriate parties are "in place" at the Department, we will be glad to set up a meeting with them so you may present your arguments.

Customs intends to continue the current "periodic payment against statement" prototype and agree with you that the ACH payment system works well and will be incorporated into ACE.

We note your comments regarding "Average Daily Balance" and the Semi-Monthly payment and IASS approach. We assume you will discuss this issue further in **the March** Trade meeting. We remain optimistic that once the Trade decides the key features it wants in the new financial system, with the possible exception of the 'interest" issue, we will be able to amicably reach agreement regarding the details.

4. Re: The Import Entry Process and Summary and Beyond Based on the discussion with the your groups at the February meeting, we believe that a number of your

comments in this section may be amended. However, in order to further the discussion at your March meeting, we will respond to both your written submission and the comments at the February meeting.

The Customs Service supports the IASS concept and remains willing to adopt it when practical. As we all know, that "practicality" rests on the Census statistics issue. We are delighted that the Trade responded so enthusiastically to the Census presentation regarding IASS acceptability and, hopefully, that can be the basis for an agreement. We anticipate that this issue will not reach final resolution until Congress has an opportunity to review the completed "Data Study". At any rate, let's assume that there is some form of IASS (monthly entry) that is the cornerstone of the new system. In order to assist you in your review process, we have attached a set of system design issue questions relating to IASS that you may wish to discuss at your meeting. "

The comments in your response support IASS and our proposal for both a Regular and Extended option for entry summary processing with a corrective period for each option. It is our belief, based on the discussion at the February meeting, that many, if not the majority, of the attending groups now favor a viable IASS form of monthly entry (while maintaining the option of the current entry/entry summary process), improved reconciliation programming and no statutory corrective period. If we are correct in our belief, then the Regular/Extended option features of the ERP proposal are rendered moot. Rather than the "Fiscal Year" approach envisioned in our "Extended Option", we would continue to focus on an "entry by entry" approach, although some of those entries would be monthly IASS submissions. We recognize that uncertainty as to the Trade "consensus proposal" is the reason for the "Trade only" March meeting but we offer the following comments both to your submission and the February discussion:

- a) Customs ERP proposal is our attempt to rectify the various problems identified in "prototype" projects and present possible solutions. Our "Extended Option" approach was a direct response to the Trade and Customs difficulties with "flagging" entries for

Reconciliation. Additionally, we believe that as the entry volumes race towards 50 million entries per year a broader "fiscal year" activity approach will be preferable for all parties. However, as one of the Trade attendees at the February meeting noted, that approach may be more "visionary" than the Trade had considered. We still strongly believe that day will come, but if the Trade feels that we aren't there yet, Customs is prepared to alter our proposal to focus on implementing IASS and an improved Reconciliation process.

- b) Your comments indicate "We see no valid reason why Customs should refrain from reviewing Regular Option entries during the corrective period". In your March meeting, we assume that the need for a statutory "corrective period" will be a major discussion topic. Customs is willing to support a statutory correction period but only if our current statutory processing times are then amended to the end of the correction period. Absent very unusual circumstances, Customs does not intend to use its workforce to review the entries during the corrective period. The Mod Act was designed on the assumption that it was the importer's job to correctly make the entry and Customs to use a variety of "selectivity" techniques to be reasonably comfortable that they did. As such, Customs will not allocate its workforce until we receive your legally "final" information.

Additionally, it should be noted that while many companies have willingly assumed their legal responsibilities under the Mod Act, some companies still appear to require a little incentive. In a recent 12 month period, over \$16 million in prior disclosure payments were received simply from the issuance by the Office of Regulatory Audit of a notice that a company had been selected for audit. We are concerned that if the "corrective" and Customs processing periods ran simultaneously, some companies would take no follow-up action unless there were some indication Customs was conducting a detailed review of their entries.

- c) In the ACE environment, post entry submissions will be made electronically, replacing the current

cumbersome, paper bound, **SILs/PEA** processing and supplementing the current prior disclosure requirement. It is our sense that many of the Trade attendees now believe that it is better to keep the current legal structure, improve the post entry acceptance procedures via automation and leave **the** matter as a policy issue for Customs, rather than create a statutory correction period with its operational implications.

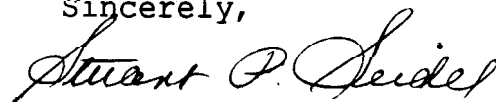
- d) If the Trade decides it wishes to keep the "dual track" approach in our ERP proposal, we agree that the "correction period" for the Extended option can be "fiscal year plus 6 months". You object to the open 3 year Customs review period that we propose. We are willing to accept the current statutory processing times from the point, "end of the fiscal year plus 6 month" period. The existing timeframes are as follows: Customs gets a year to process but the timeframe is statutorily extendable for an additional 3 year period for valid reasons. We interpret the existing law to indicate that if Customs decides to audit a company, that is a valid reason for extension. "t
- e) In your comments, you object to our proposal that an importer must choose between the "Regular" and "Extended" options. The reason we included that requirement is that the very essence of our proposal is the creation of a processing track (Extended option) that gets a company out of "entry by entry" processing and, instead, views the individual **entries as** merely "inputs" into the overall corporate "spreadsheet" for a fiscal year. The "spreadsheet" then would become the legal entity and adjustments could be made at that level without having to track back to individual entries. Such a system would provide maximum flexibility for the Trade and Customs and eliminate the need for tracking individual entry liquidations. If you blend the two approaches, you lose much of the flexibility. You cannot be making "spreadsheet" level adjustments to entries that may have already liquidated. If you want to blend the two approaches, in our opinion, it more closely resembles a modified form of Reconciliation rather than the more flexible fiscal year approach.

f) Re: Protestability Your comments indicate that "We remain committed to the principle that all entries that have become final are and must be subject to protest within the period provided." You, and many **groups**, tend to treat this as a "policy" position by Customs. We respectfully disagree. Our position, in our opinion, merely reflects current law and is based on the Court's interpretation in various cases, particularly in a "deemed liquidation" situation. For a variety of operational and data processing reasons, we anticipate ACE will be designed in a "deemed liquidation" mode. However, as indicated in our various meetings, once we agree on what the "up front" entry process should be, we will have further discussions regarding the "tail end" of the process dealing with liquidations, Protests and "treatment".

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We trust these comments will be useful in your deliberations. Obviously, we still have significant points of disagreement, but we strongly believe that we have many more points of agreement. Let's define them and incorporate them in the ACE design while the discussions continue regarding the controversial areas.

Sincerely,



Stuart P. Seidel
Assistant Commissioner,
Office of Regulations
and Rulings

**American Association of Exporters & Importers
U.S. Business Alliance for Customs Modernization
Joint Industry Group
National Customs Brokers and Forwarders Association of America**

February 12, 2001

Mr. Stuart P. Seidel
Assistant Commissioner
Office of Regulations and Rulings
Ronald Reagan Building
1300 Pennsylvania Avenue, NW
Washington, DC 20229

Re: Entrv Revision Project (ERP) III

Dear Mr. Seidel:

This letter and the enclosed joint position paper are filed on behalf of the American Association of Exporters & Importers, U.S. Business Alliance for Customs Modernization, Joint Industry Group, and National Customs Brokers and Forwarders Association of America. We again commend Customs' efforts to rethink and retool the entry process in conjunction with the design and implementation of the Automated Commercial Environment (ACE) system. We appreciate the opportunity the agency has provided for trade community participation and input in this process. The attached paper is the consensus position of the four groups on ERP III, particularly those components or points as to which Customs requested industry views prior to the next ERP meeting between Customs and the trade community on February 13 and 14, 2001.

We note here that ERP III attempts to address one aspect of Customs modernization, but it does not cover all Customs processes or practices that warrant revision. We believe that all other proposals addressing Customs modernization warrant consideration, even while ERP is under active discussion.

On January 13, 2001, in a memorandum from the Customs ERP Team, Mr. John Durant, draft notes of the last ERP meeting on January 3 and 4, 2001 were distributed. We believe the following corrections or clarifications should be made to those draft notes:

Discussion Item no. 5 appears to overstate the trade community position. So far as we are aware, no group or element of the trade community has advocated the aggregation of data for release purposes. Rather, we stated that only minimal data should be necessary for release (in some cases release decisions could be based on prior analysis of data provided by importers, as in the NCAP prototype). Our goal is the option to provide aggregated data for purposes other than admissibility and release. That is, in our view data related to revenue and statistics should appropriately be reported on a periodic, aggregated basis.

Discussion Item no. 10 reflects Customs' position, not that of the trade community. While we recognize that the agency regards the interest issue as largely being outside its domain, the trade community does not necessarily agree that "revenue neutrality is essential to maintain" in the ERP design.

Action Item no. 9 states that the trade community would provide a proposal for finalizing data reported under Extended Option, before the actual end of the process. We are not clear that the trade community committed to provide such a proposal, and in any event we believe such finalization is unnecessary given our counterproposal on Extended Option.

We look forward to continuing to work with the Customs Service on this important project.

Sincerely,



John P. Simpson, American Association of
Exporters & Importers



James P. Finnegan, U.S. Business Alliance for
Customs Modernization

Ronald D. Schoof, Joint Industry Group

Peter H. Powell, Sr., National Customs Brokers and
Forwarders Association of America

**American Association of Exporters & Importers
U.S. Business Alliance for Customs Modernization
Joint Industry Group
National Customs Brokers and Forwarders Association of America**

Statement of Position – ERP III Proposal

Part 1: Cargo Release and Entry Tracks

We support adoption and expansion of Customs' proposal of a four-track system for cargo release.

We believe that Track 1 (Live Entry with Payment) should be defined and applied as narrowly as possible. Aside from requiring this track for insolvent importers, in other cases its use should be optional and should not be the required track for importers of quota goods. We recommend that the term "sanctioned importer" be clarified so as to be limited to those who are delinquent in the payment of duties, etc. Track 1 should not be used as a punitive measure for other reasons.

Track 4 (Release on Minimal Data) should be as expansive as possible. For example, it should not be limited to "importers and commodities considered low-risk," as stated in the ERP III proposal. Likewise, quota goods should not be excluded per se from Track 4 eligibility.

The term "minimal data" must be a fluid one, including only those data elements that are absolutely necessary to admissibility and release decisions for the type of merchandise imported. Thus, it may be that a particular data element is relevant to the admissibility of merchandise A, but the same data element is not relevant to the admissibility of merchandise B. For example, HTS classification generally should be required for release purposes only to the 6th digit, although in some cases classification to the 8th or 10th digit may be needed to determine admissibility. Quantity should be required as a release data element only for goods subject to import restraints, and value should be required only when relevant to admissibility.

Part 2: The Money

We support the severing of the link between the specific entry and the payment of the duties, taxes, and fees relating to that entry, resulting in collections and refunds being on a periodic, rather than entry-by-entry basis. We are firmly opposed to any revision to the payment system which would call for the payment of interest, beyond what is currently applicable for late payments. To the extent "revenue neutrality" must be measured in adopting a periodic payment system, we suggest that Customs must take into account the savings it would realize by the significant reduction in the number of

transactions to process. As the ERP III proposal acknowledges, "Processing individual entries for collections or refunds is a very labor-intensive and expensive process."

We agree with Customs that any new system should be as simple as possible. Of the two options presented in ERP III, the Average Daily Balance is overly complicated and cumbersome. We would strongly prefer a concept similar to the Semi-Monthly Statement option, combined with Import Activity Summary Statement, ("IASS") provided certain modifications are made. First, the semi-monthly payment would be estimated by the importer or its broker using their own internal financial processes. This differs from the Customs' version in that an importer would not be required to track and calculate the duty on each importation during the month. Second, interest would be owed only if the total of the two semi-monthly payments is less than the duties owed on the entries in the period. Third, the IASS, currently authorized under 19 U.S.C. §1484(a)(2)(A), must be implemented. It permits entry information to be submitted on a monthly aggregate basis, within a period not to exceed 20 days following the end of the month. The provision for IASS also contemplates payment on a periodic basis because 19 U.S.C. §1505(a) provides that interest accrues as of the first day of the month in which the IASS is filed. We reserve comment on the format and means by which transactions are posted on the statement.

In addition, we believe that Customs should continue the current periodic payment against statement used by brokers and importers. However, any current restrictions to removing a scheduled payment (e.g., textile quota entries) should be eliminated. Finally, we note that the present ACH payment system operates well, and it should continue in use.

Parts 3 & 4: The Import **Entry** Process and Summary and Beyond

First, we reiterate here that Customs should implement IASS as soon as possible. As implemented, IASS should permit those importers utilizing the procedure to provide detailed information in aggregate form for all releases during the preceding month.

We support the proposal to provide a "corrective period," in both the Regular Option and Extended Option, within which an entry summary or IASS may be corrected without incurring liability under 19 U.S.C. §1592. Collections and **refunds** attributable to corrections made during the corrective period should be effected promptly during such period. For the Regular Option, Customs proposes a 30-day corrective period, with liquidation (or "finalization") occurring one year **after** date of entry. This period is much too short and unrealistic. In some cases, quantity errors might be discovered within that time period, but most other types of errors or data changes cannot be discovered until months after receipt of the goods by the importer.

We propose that in both the Regular and Extended Options the corrective period run essentially simultaneously with the Customs review period. In the Regular Option, the importer would have one year to provide any corrections. If any correction is made

within the last 90 days of the year, the Customs review period would be extended by 90 days from the date of the correction. Customs would still retain the authority to extend the review period for the reasons provided under current law, but for the IASS, Customs would have to identify the issue or item extended. The philosophy here is that Customs should encourage that the correct information be provided at any time up until the entry is final. We see no valid reason why Customs should refrain from reviewing Regular Option entries during the corrective period.

For Extended Option, we support Customs' proposal in ERP III that the importer finalize its declarations within 18 months of the beginning of the importer's fiscal year. However, a three-year Customs review period thereafter is unacceptable. We would support a Customs review period of one year **from** the end of the period for filing the final declaration. That is what is currently provided for under the Reconciliation program, which Customs notes is analogous to Extended Option. Again, extensions for the reasons provided under current law would be allowed in the Extended Option, but Customs would be required to specify the issue or item extended. As with Regular Option, the importer should have the opportunity to make corrections up until the end of the Customs review period. Any corrections made within the last 90 days of the review period would extend Customs review for 90 days from the date of correction.

We disagree with the implication in Customs' proposal that an importer must choose between the Regular Option or Extended Option for **all** its imports in a fiscal year. An importer may have no need to utilize the Extended Option for certain types of goods, for shipments from certain suppliers, for shipments going to certain corporate units, etc. We will work with Customs to devise an effective but simple method to allow importers to elect the Extended Option for less than all its importations.

Last, should it be necessary to maintain the Reconciliation program in any new environment, it should be improved and streamlined as another option for those importers who may wish to utilize it. Also, something like the SIL or PEA program should be maintained for post-corrective period corrections, albeit without the "no harm-no foul" principle applicable to corrections within the corrective period.

Part 5: Other Issues

We disagree with the Customs' proposal that if no change has been made by Customs to an importer's final declaration, then there are no protestable issues. We remain committed to the principle that **all** entries that have become final are and must be subject to protest within the period provided therefor.

The Regular Option and Extended Option concepts may have implications for the period of limitations in 19 U. S.C. § 1621, which would require further consideration.